D.B. SPECIAL APPEAL (WRIT) NO.559/2004.
(Mohanlal Rajpurohit vs. State of Rajasthan & Ors.)

Date :16.02.2005.

HON'BLE MR.JUSTICE N.N.MATHUR
HON'BLE MR.JUSTICE MANAK LALL MOHTA

Mr.Govind Rajpurohit, for the appellant.
Mr.H.r. Soni, Government Advocate.

This special appeal is directed against the judgment of the learned Single Judge dated 04.08.2004, dismissing the writ petition in limine relegating the appellant to the remedy of civil suit.

The short facts of the case are that the appellant retired from Tehsildar services on 30th September, 1996. However, he was not paid gratuity as the departmental inquiry was pending against him. On appeal filed by him the Rajasthan Service Appellate Tribunal by order dated 15.10.1998 directed the respondent to settle his pension case within a period of three months. On completion of departmental inquiry, the Board of Revenue passed an order dated 30th June, 2001 for payment of gratuity. In respect of the fact that the Board of Revenue directed to make the payment on 30th June, 2001, it was delayed and ultimately a sum of Rs.1,13,768/- was paid on 19.10.2002. Thus, according to the appellant there was a delay of 15 months

and 18 days in payment of gratuity. Thus, he claimed interest on delayed payment of gratuity.

Having heard learned counsel for the parties, we are of the view that the instant appeal deserves to be allowed. The appellant has placed on record a circular dated 24th February, 2001 as Annexure-3 on the subject "Interest on delayed payment of retiral benefits." The State Government pursuant to the directions of this Court dated 12.09.1997 in D.B. Special Appeal No.297/1995 laid down a complete procedure in addition to the procedure already laid down under the Rajasthan Civil Services (Pension) Rules, 1996. In the said case the Division Bench of this Court has ordered that in the eventuality of delay in payment of retiral benefits, without sufficient reason, the retiring employee shall be entitled to receive interest thereon @ 12% per annum, for the period commencing from 60 days after the date of such retiral benefits become due, and up to the date of authorization of such benefits to the employee by the Director, Pension Department. Para 3 of the guidelines reads as follows:-

> "**3.** If the retiral benefits are not sanctioned/paid even after expiry of 60 days from the date of retirement invariably, unless there are exceptional circumstances to act otherwise, the pensioner shall be entitled to the interest at the rate of 12% p.a. from the due date till actual payment is made."

The another Division Bench of this Court in B.L.

Agrawal Vs. State of Rajasthan & Ors., reported in 2001 (3) RLR 768 following the decision of the Apex Court in Vijay L. Mehrotra Vs. State of U.P. & Ors., reported in AIR 2000 SC 3513 and State of Kerala & Ors. Vs. M. Padmanabhan Nair reported in AIR 1985 SC 356 awarded interest @ 12% per annum from the date of retirement till the payment is made.

The only explanation given by the respondent for delay in payment of gratuity is that the substantial time was consumed in completing the service book of the appellant. In our opinion the explanation is not tenable. The appellant had retired as back as in the year 1996. It was the duty of the Pension Department to complete the service book. We are of the view that the Department has not taken due care in ensuring that the directions issued by the State Government under circular dated 24th February, 2001 in compliance of the Division Bench judgment of this Court and further in addition to the provisions of Rajasthan Civil Services (Pension) Rules, 1996 the gratuity was paid in time.

The learned Single Judge was not correct in relegating the appellant to the remedy of civil suit. It is not a case where there is any dispute as to the payment of gratuity. The only question involved is as to whether the appellant is entitled to interest on the delayed payment. This question can be

conventionally decided in a writ jurisdiction. In the facts of the case the appellant is entitled to interest on the delayed payment.

Consequently, the appeal is allowed. The order of the learned Single Judge dated 04.08.2004 is set aside. The writ petition is allowed. The respondents are directed to pay interest to the appellant on the gratuity amount of Rs.1,13,768/- @ 18% per annum. The payment shall be made within a period of two months from the date of the order. The third respondent Joint Director, Pension and Pensioners Welfare Department, Jodhpur shall submit the compliance report.

(MANAK LALL MOHTA),J. **(N.N.MATHUR),J**

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